

**ASSEMBLY BILL**

**No. 1711**

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**Introduced by Assembly Member Cooley**

February 13, 2014

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An act to amend Sections 11346.2 and 11346.3 of the Government Code, relating to administrative regulations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1711, as introduced, Cooley. Administrative Procedures Act: economic impact assessment.

Existing law requires every state agency subject to the Administrative Procedure Act to provide an initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation. The act requires the initial statement of reasons to include a standardized regulatory impact analysis prepared by each agency that proposes to adopt, amend, or repeal any major regulation, as defined, on or after November 1, 2013.

The act also requires every state agency proposing to adopt, amend, or repeal a regulation that is not a major regulation or that is a major regulation proposed prior to November 1, 2013, to prepare an economic impact assessment that makes specified assessments. This bill would require economic impact assessment to be included in the initial statement of reasons.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 11346.2 of the Government Code is amended to read:

11346.2. Every agency subject to this chapter shall prepare, submit to the office with the notice of the proposed action as described in Section 11346.5, and make available to the public upon request, all of the following:

(a) A copy of the express terms of the proposed regulation.

(1) The agency shall draft the regulation in plain, straightforward language, avoiding technical terms as much as possible, and using a coherent and easily readable style. The agency shall draft the regulation in plain English.

(2) The agency shall include a notation following the express terms of each California Code of Regulations section, listing the specific statutes or other provisions of law authorizing the adoption of the regulation and listing the specific statutes or other provisions of law being implemented, interpreted, or made specific by that section in the California Code of Regulations.

(3) The agency shall use underline or italics to indicate additions to, and strikeout to indicate deletions from, the California Code of Regulations.

(b) An initial statement of reasons for proposing the adoption, amendment, or repeal of a regulation. This statement of reasons shall include, but not be limited to, all of the following:

(1) A statement of the specific purpose of each adoption, amendment, or repeal, the problem the agency intends to address, and the rationale for the determination by the agency that each adoption, amendment, or repeal is reasonably necessary to carry out the purpose and address the problem for which it is proposed. The statement shall enumerate the benefits anticipated from the regulatory action, including the benefits or goals provided in the authorizing statute. These benefits may include, to the extent applicable, nonmonetary benefits such as the protection of public health and safety, worker safety, or the environment, the prevention of discrimination, the promotion of fairness or social equity, and the increase in openness and transparency in business and government, among other things. Where the adoption or amendment of a regulation would mandate the use of specific technologies or equipment, a statement of the reasons why the

1 agency believes these mandates or prescriptive standards are  
2 required.

3 (2) ~~For~~(A) *For a regulation that is not a major regulation, the*  
4 *economic impact assessment required by subdivision (b) of Section*  
5 *11346.3.*

6 (B) *For a major regulation proposed on or after November 1,*  
7 *2013, the standardized regulatory impact analysis required by*  
8 *subdivision (c) of Section 11346.3.*

9 (3) An identification of each technical, theoretical, and empirical  
10 study, report, or similar document, if any, upon which the agency  
11 relies in proposing the adoption, amendment, or repeal of a  
12 regulation.

13 (4) (A) A description of reasonable alternatives to the regulation  
14 and the agency's reasons for rejecting those alternatives.  
15 Reasonable alternatives to be considered include, but are not  
16 limited to, alternatives that are proposed as less burdensome and  
17 equally effective in achieving the purposes of the regulation in a  
18 manner that ensures full compliance with the authorizing statute  
19 or other law being implemented or made specific by the proposed  
20 regulation. In the case of a regulation that would mandate the use  
21 of specific technologies or equipment or prescribe specific actions  
22 or procedures, the imposition of performance standards shall be  
23 considered as an alternative.

24 (B) A description of reasonable alternatives to the regulation  
25 that would lessen any adverse impact on small business and the  
26 agency's reasons for rejecting those alternatives.

27 (C) Notwithstanding subparagraph (A) or (B), an agency is not  
28 required to artificially construct alternatives or describe  
29 unreasonable alternatives.

30 (5) (A) Facts, evidence, documents, testimony, or other  
31 evidence on which the agency relies to support an initial  
32 determination that the action will not have a significant adverse  
33 economic impact on business.

34 (B) (i) If a proposed regulation is a building standard, the initial  
35 statement of reasons shall include the estimated cost of compliance,  
36 the estimated potential benefits, and the related assumptions used  
37 to determine the estimates.

38 (ii) The model codes adopted pursuant to Section 18928 of the  
39 Health and Safety Code shall be exempt from the requirements of  
40 this subparagraph. However, if an interested party has made a

1 request in writing to the agency, at least 30 days before the  
2 submittal of the initial statement of reasons, to examine a specific  
3 section for purposes of estimating the cost of compliance and the  
4 potential benefits for that section, and including the related  
5 assumptions used to determine the estimates, then the agency shall  
6 comply with the requirements of this subparagraph with regard to  
7 that requested section.

8 (6) A department, board, or commission within the  
9 Environmental Protection Agency, the Natural Resources Agency,  
10 or the Office of the State Fire Marshal shall describe its efforts, in  
11 connection with a proposed rulemaking action, to avoid  
12 unnecessary duplication or conflicts with federal regulations  
13 contained in the Code of Federal Regulations addressing the same  
14 issues. These agencies may adopt regulations different from federal  
15 regulations contained in the Code of Federal Regulations  
16 addressing the same issues upon a finding of one or more of the  
17 following justifications:

18 (A) The differing state regulations are authorized by law.

19 (B) The cost of differing state regulations is justified by the  
20 benefit to human health, public safety, public welfare, or the  
21 environment.

22 (c) A state agency that adopts or amends a regulation mandated  
23 by federal law or regulations, the provisions of which are identical  
24 to a previously adopted or amended federal regulation, shall be  
25 deemed to have complied with subdivision (b) if a statement to  
26 the effect that a federally mandated regulation or amendment to a  
27 regulation is being proposed, together with a citation to where an  
28 explanation of the ~~provisions of the~~ regulation can be found, is  
29 included in the notice of proposed adoption or amendment prepared  
30 pursuant to Section 11346.5. However, the agency shall comply  
31 fully with this chapter with respect to any provisions in the  
32 regulation that the agency proposes to adopt or amend that are  
33 different from the corresponding provisions of the federal  
34 regulation.

35 (d) This section shall be inoperative from January 1, 2012, until  
36 January 1, 2014.

37 SEC. 2. Section 11346.3 of the Government Code is amended  
38 to read:

39 11346.3. (a) ~~State agencies~~ A state agency proposing to adopt,  
40 amend, or repeal any administrative regulation shall assess the

1 potential for adverse economic impact on California business  
2 enterprises and individuals, avoiding the imposition of unnecessary  
3 or unreasonable regulations or reporting, recordkeeping, or  
4 compliance requirements. For purposes of this subdivision,  
5 assessing the potential for adverse economic impact shall require  
6 agencies, when proposing to adopt, amend, or repeal a regulation,  
7 to adhere to the following requirements, to the extent that these  
8 requirements do not conflict with other state or federal laws:

9 (1) The proposed adoption, amendment, or repeal of a regulation  
10 shall be based on adequate information concerning the need for,  
11 and consequences of, proposed governmental action.

12 (2) The state agency, prior to submitting a proposal to adopt,  
13 amend, or repeal a regulation to the office, shall consider the  
14 proposal's impact on business, with consideration of industries  
15 affected including the ability of California businesses to compete  
16 with businesses in other states. For purposes of evaluating the  
17 impact on the ability of California businesses to compete with  
18 businesses in other states, an agency shall consider, but not be  
19 limited to, information supplied by interested parties.

20 (3) An economic *impact* assessment prepared pursuant to this  
21 subdivision for a proposed regulation that is not a major regulation  
22 or that is a major regulation proposed prior to November 1, 2013,  
23 shall be prepared in accordance with subdivision (b), *and shall be*  
24 *included in the initial statement of reasons as required by Section*  
25 *11346.2*. An economic assessment prepared pursuant to this  
26 subdivision for a major regulation proposed on or after November  
27 1, 2013, shall be prepared in accordance with subdivision (c), and  
28 shall be included in the initial statement of reasons as required by  
29 Section 11346.2.

30 (b) (1) ~~All state agencies~~ *A state agency* proposing to adopt,  
31 amend, or repeal a regulation that is not a major regulation or that  
32 is a major regulation proposed prior to November 1, 2013, shall  
33 prepare an economic impact assessment that assesses whether and  
34 to what extent it will affect the following:

35 (A) The creation or elimination of jobs within the state.

36 (B) The creation of new businesses or the elimination of existing  
37 businesses within the state.

38 (C) The expansion of businesses currently doing business within  
39 the state.

1 (D) The benefits of the regulation to the health and welfare of  
2 California residents, worker safety, and the state's environment.

3 (2) This subdivision does not apply to the University of  
4 California, the Hastings College of the Law, or the Fair Political  
5 Practices Commission.

6 (3) Information required from ~~a state agency~~ *agency* for the  
7 purpose of completing the assessment may come from existing  
8 state publications.

9 (c) (1) Each state agency proposing to adopt, amend, or repeal  
10 a major regulation on or after November 1, 2013, shall prepare a  
11 standardized regulatory impact analysis in the manner prescribed  
12 by the Department of Finance pursuant to Section 11346.36. The  
13 standardized regulatory impact analysis shall address all of the  
14 following:

15 (A) The creation or elimination of jobs within the state.

16 (B) The creation of new businesses or the elimination of existing  
17 businesses within the state.

18 (C) The competitive advantages or disadvantages for businesses  
19 currently doing business within the state.

20 (D) The increase or decrease of investment in the state.

21 (E) The incentives for innovation in products, materials, or  
22 processes.

23 (F) The benefits of the regulations, including, but not limited  
24 to, benefits to the health, safety, and welfare of California residents,  
25 worker safety, and the state's environment and quality of life,  
26 among any other benefits identified by the agency.

27 (2) This subdivision shall not apply to the University of  
28 California, the Hastings College of the Law, or the Fair Political  
29 Practices Commission.

30 (3) Information required from state agencies for the purpose of  
31 completing the analysis may be derived from existing state, federal,  
32 or academic publications.

33 (d) Any administrative regulation adopted on or after January  
34 1, 1993, that requires a report shall not apply to businesses, unless  
35 the state agency adopting the regulation makes a finding that it is  
36 necessary for the health, safety, or welfare of the people of the  
37 state that the regulation apply to businesses.

38 (e) Analyses conducted pursuant to this section are intended to  
39 provide agencies and the public with tools to determine whether  
40 the regulatory proposal is an efficient and effective means of

1 implementing the policy decisions enacted in statute or by other  
2 provisions of law in the least burdensome manner. Regulatory  
3 impact analyses shall inform the agencies and the public of the  
4 economic consequences of regulatory choices, not reassess  
5 statutory policy. The baseline for the regulatory analysis shall be  
6 the most cost-effective set of regulatory measures that are equally  
7 effective in achieving the purpose of the regulation in a manner  
8 that ensures full compliance with the authorizing statute or other  
9 law being implemented or made specific by the proposed  
10 regulation.

11 (f) Each state agency proposing to adopt, amend, or repeal a  
12 major regulation on or after November 1, 2013, and that has  
13 prepared a standardized regulatory impact analysis pursuant to  
14 subdivision (c), shall submit that analysis to the Department of  
15 Finance upon completion. The department shall comment, within  
16 30 days of receiving that analysis, on the extent to which the  
17 analysis adheres to the regulations adopted pursuant to Section  
18 11346.36. Upon receiving the comments from the department, the  
19 agency may update its analysis to reflect any comments received  
20 from the department and shall summarize the comments and the  
21 response of the agency along with a statement of the results of the  
22 updated analysis for the statement required by paragraph (10) of  
23 subdivision (a) of Section 11346.5.